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IN THE UNITED DISTRICT COURT DISTRICT OF ARIZONA
IN AND FOR THE COUNTY OF PIMA

Mark William Kelly,

Plaintiff,

v.

Pima County Sheriff's Department, Deputy
Gina M. Lumia (Badge #7532), Supervisor
Guy A. Marchal (Badge #5804), and James
Hinkle, Desert Earth Contracting LLC.,
Richmond American Construction Inc.

Defendants.

Case No. CV-24-00001-TUC-CH(PSOT)

**RICHMOND AMERICAN
CONSTRUCTION INC'S MOTION
TO STRIKE PLAINTIFF'S MOTION
IN OPPOSITION TO DEFENDANT
RICHMOND AMERICAN'S
MOTION TO DISMISS**

(Assigned to the Honorable Diane J.
Humetewa)

Defendant Richmond American Construction, Inc. ("Richmond") by and through undersigned counsel, hereby files its Motion to Strike Plaintiff's Motion in Opposition to Defendant Richmond American's Motion to Dismiss as follows:

On February 20, 2024, Richmond filed its Answer to Plaintiff's Second Amended Complaint. Subsequently, on March 8, 2024, Plaintiff filed an unwarranted reply to Richmond's Answer entitled "Plaintiff's Motion in Opposition to Defendant Richmond American's Motion to Dismiss."

As a threshold matter, Richmond has not yet filed a Motion to Dismiss in this case and assumes Plaintiff's mischaracterization is a clerical error. Plaintiff clearly intended to respond

1 to Richmond's Answer and proceeds to maintain the paragraphs in his Second Amended
2 Complaint and dispute the paragraphs of Richmond's Answer.

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4 Pursuant to Ariz. R. Civ. P. 7, a reply to an Answer is only permitted "if the court
5 orders one". As this Court has not ordered Plaintiff to reply to Richmond's Answer, Plaintiff's
6 filing is improper and should be stricken from the record. Accordingly, Richmond
7 respectfully requests that the Court Strike Plaintiff's "Motion in Opposition to Defendant
8 Richmond American's Motion to Dismiss" from the record.
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11 RESPECTFULLY SUBMITTED this 28th day of March 2024.

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13 BURG SIMPSON
14 ELDREDGE HERSH & JARDINE, P.C.

15 By: /s/ David K. TeSelle
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17 Joshua B. Abromovitz
18 2390 E. Camelback Road, Suite 403,
19 Phoenix, Arizona 85016-9225
20 *Attorneys for The Defendants*
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CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of March 2024, I electronically transmitted a PDF version of this document to the Clerk of the Court, using the CM/ECF System for filing and for transmittal of a Notice of Electronic Filing to the following CMECF registrants:

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Pro Per

/s/ Laura M. Ramirez